

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

ARLENE KOSAK, individually and on
behalf of others similarly situated,

Plaintiff,

v.

NEW YORK MEDIA HOLDINGS, LLC,

Defendant.

Case No. Case No. 2:22-cv-11850-MFL-EAS
Hon. Matthew Leitman

**DEFENDANT NEW YORK MEDIA HOLDINGS, LLC'S
MOTION FOR LEAVE TO FILE RESPONSE
TO NOTICE OF SUPPLEMENTAL AUTHORITIES**

Defendant New York Media Holdings, LLC ("NYMH") respectfully moves the Court for leave to file a response to Plaintiff's Notice of Supplemental Authorities (the "Notice"), filed June 23, 2023 (ECF No. 25).

1. In her Notice, Plaintiff encloses and makes arguments on three recent decisions: *Nock v. Boardroom, Inc. d/b/a Bottom Line, Inc.*, Case No. 2:22-cv-11296-BAF-EAS, ECF No. 27 (E.D. Mich. May 19, 2023); *Batts v. Gannett Co.*, Case No. 4:22-cv-10685, ECF. No. 28 (E.D. Mich. Mar. 30, 2023); and the Report and Recommendation (the "R&R") in *Briscoe v. NTVB Media Inc.*, Case No. 4:22-cv-10352, ECF. No. 41 (E.D. Mich. Mar. 3, 2023). Plaintiff implies that this Court should find the holdings in those cases persuasive here.

2. In view of Plaintiff's arguments concerning the weight this Court should give these cases, which would provide Plaintiff with an unfair advantage if left unanswered, NYMH respectfully seeks leave to submit a response to Plaintiff's Notice. The proposed Response to Notice of Supplemental Authorities is attached hereto as Exhibit A.

3. Pursuant to Local Rule 7.1(a), Defendant's counsel certifies that on July 5, 2023, they communicated with Plaintiff's counsel, explaining the nature of the relief sought in this Motion and seeking concurrence in that relief. Plaintiff's counsel stated they would confer with their client and get back to us today, but we have not heard back from them at the time of this filing.

Dated: July 6, 2023

Respectfully submitted,

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Plaintiff,

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NEW YORK MEDIA HOLDINGS, LLC,

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Case No. Case No. 2:22-cv-11850-MFL-
EAS

Hon. Matthew Leitman

**BRIEF IN SUPPORT OF DEFENDANT NEW YORK MEDIA
HOLDINGS, LLC'S MOTION FOR LEAVE TO FILE
RESPONSE TO NOTICE OF SUPPLEMENTAL AUTHORITIES**

STATEMENT OF ISSUE PRESENTED

1. Whether New York Media Holdings, LLC should be granted leave to file a response to Plaintiff's arguments in her Notice of Supplemental Authorities (ECF No. 25).

Defendant's Answer: Yes.

STATEMENT OF CONTROLLING/MOST APPROPRIATE AUTHORITY

The controlling and most appropriate authority for this Motion includes:

1. *United States v. Van*, No. 06-20491, 2021 WL 4962139 (E.D. Mich. Oct. 26, 2021).
2. *Tokarczyk v. A.G. Edwards & Sons, Inc.*, No. 08-12481, 2009 WL 1025392 (E.D. Mich. Apr. 15, 2009).
3. *Nock v. Boardroom, Inc. d/b/a Bottom Line Inc.*, No. 22-cv-11296, ECF No. 27 (E.D. Mich. May 19, 2023).
4. *Batts v. Gannett Co.*, Case No. 4:22-cv-10685, ECF. No. 28 (E.D. Mich. Mar. 30, 2023).
5. *Briscoe v. NTVB Media Inc.*, Case No. 4:22-cv-10352, ECF. No. 41 (E.D. Mich. Mar. 3, 2023).

Defendant New York Media Holdings, LLC (“NYMH”) respectfully seeks leave to submit a response to Plaintiff’s Notice of Supplemental Authorities (the “Notice”), filed June 23, 2023 (ECF No. 25).

ARGUMENT

In her Notice, Plaintiff encloses and makes arguments on three recent decisions: *Nock v. Boardroom, Inc. d/b/a Bottom Line, Inc.*, Case No. 2:22-cv-11296-BAF-EAS, ECF No. 27 (E.D. Mich. May 19, 2023); *Batts v. Gannett Co.*, Case No. 4:22-cv-10685, ECF. No. 28 (E.D. Mich. Mar. 30, 2023); and the Report and Recommendation in *Briscoe v. NTVB Media Inc.*, Case No. 4:22-cv-10352, ECF. No. 41 (E.D. Mich. Mar. 3, 2023).

Plaintiff implies that this Court should find the holdings in those cases persuasive here. In view of Plaintiff’s arguments concerning the weight this Court should give these cases, which would provide Plaintiff with an unfair advantage if left unanswered, Defendant respectfully seeks leave to submit a response to Plaintiff’s Notice. *See, e.g., Tokarczyk v. A.G. Edwards & Sons, Inc.*, No. 08-12481, 2009 WL 1025392, at *1 n.1 (E.D. Mich. Apr. 15, 2009) (denying a motion to strike a response and notice of supplemental authority but granting the opportunity to file a supplemental pleading to address newly raised arguments and caselaw); *United States v. Van*, No. 06-20491, 2021 WL 4962139, at *2 (E.D. Mich. Oct. 26, 2021) (allowing defendant to file a response to a notice of supplemental authority

concerning an opinion entered after briefing to argue new opinion was wrongly decided); *Smith v. Stellar Recovery, Inc.*, No. 15-cv-11717, 2017 WL 1336075, at *8 (E.D. Mich. Feb. 7, 2017) (allowing defendant to respond to plaintiff's notice of supplemental authority). The proposed Response to Notice of Supplemental Authorities is attached hereto as Exhibit A.

CONCLUSION

For the foregoing reasons, NYMH respectfully requests that it be granted leave to file a response to Plaintiff's Notice of Supplemental Authorities.

Dated: July 6, 2023

Respectfully submitted,

/s/ Kristen C. Rodriguez
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Certificate of Service

I hereby certify that on July 6, 2023, a copy of the foregoing document was filed electronically and served by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing.

/s/ Kristen C. Rodriguez
Kristen C. Rodriguez